

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

PATRICK D. THOMPSON

No. 21 CR 279

Honorable Franklin U. Valderrama

**GOVERNMENT'S RESPONSE TO THE DEFENDANT'S MOTION FOR
CLARIFICATION REGARDING CLOSING ARGUMENT (DKT. NO. 133)**

There is no need to clarify whether the following exchange was admitted, over the government's objection, as substantive evidence:

Q: Mr. Hannigan, isn't it true that you testified previously a couple of weeks ago that in that conversation, Mr. Thompson asked you how it happened?

A: Yes.

Feb. 9, 2022, Tr. At 45:19-22 (rough). This exchange came after the following exchange:

Q: In that conversation, isn't it true that Mr. Thompson asked you how did those deductions get on the return?

A: I -- I don't remember specifically if he asked me that. I don't know.

Feb. 9, 2022, Tr. At 44:6-9 (rough). The government objected and asked that the witness's recollection be refreshed before moving to impeachment. Feb. 9, 2022, Tr.

At 45:4-6 (rough). This Court overruled the government's objection¹ and allowed the impeachment. Feb. 9, 2022, Tr. At 45:15-16 (rough).

"In some cases, a witness's genuine lack of memory may be inconsistent with his prior testimony." *United States v. Gajo*, 290 F.3d 922, 932 (7th Cir. 2002). By allowing the impeachment, this Court determined that the witness's statement, "I don't remember specifically if he asked me that. I don't know," was inconsistent with the witness's prior testimony. That determination was within this Court's discretion. *Gajo*, 290 F.3d at 931-32. Because the prior statement fits the requirements set forth in Fed. R. Evid. 801(d)(1)(A), the statement was not hearsay and, over the government's objection, admitted as a prior inconsistent statement.

Respectfully submitted,

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¹ The government also objected to the relevance of evidence concerning the defendant's amended tax returns, which this Court overruled. (Dkt. No. 95 at 6-10.)